SIKKIM

GOVERNMENT GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok | Saturday 5th February, 2005 | No. 40

GOVERNMENT OF SIKKIM
EXCISE (ABKARI) DEPARTMENT
GANGTOK

No.15 /Ex(Abk)/ Dated:2.2.2005.

NOTIFICATION

In exercise of power conferred by clause (j) of section 77 read with Section 27 of the Sikkim Excise Act, 1992 (2 of 1992), the State Government hereby makes the following rules namely:-

CHAPTER – I

PRELIMINARY

Short title, extent and commencement.

1. (1) These rules may be called the Sikkim Excise (Licencing for Retail Sale of Foreign Liquor and Country liquor) Rules, 2005.
(2) They shall extend to the whole of Sikkim.
(3) They shall come into force on the date of their publication in the Official Gazette.

Definitions.

2. (1) In these rules, unless the context otherwise requires: -
(a) "Act" means the Sikkim Excise Act, 1992;
(b) "Foreign Liquor" means -
(i) Brandy, whisky, rum, vodka, gin, liqueurs, cordial, bitters and wines or mixture containing any of the liquor aforesaid;
(ii) beer, ale, porter, cider, sherry and other similar portable fermented liquors:

"Provided that the terms "Potable Foreign Liquor" shall not include unless there is anything repugnant in the subject or in the context, the spirit including rectified spirit mentioned in item (ii) aforesaid and shall include Indian Made Foreign Liquor manufactured in other States, Indian Made Foreign Liquor manufactured in Sikkim, Overseas Foreign Liquor, Liqueurs and Beer;

(c) "Duty Paid Foreign Liquor" means foreign Liquor on which duty leviable under the Tariff Act, 1934 or the Sea Custom Act, 1962 or the excise or countervailing duty under the Act has been paid and includes foreign liquor which is exempted from such duty;

(d) "Country Liquor" means plain spirit which has been made in India from materials as bases for country spirit namely rectified spirit, mahua, rice, millet, gur or molasses and all fermented liquors made from other grains according to native processes;

(e) "Form" means form appended to these rules;

(f) "Licence" means a licence granted under these rules;

(g) "Licensed premises" means premises in respect of which a licence has been issued under these rules;

(h) "Licensee" means an individual, a firm, a company incorporated under Registration of Companies Act, Sikkim, 1961 whom a licence under these rules for the retail sale of foreign liquor and country liquor is settled;

(2) Words and expressions not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

CHAPTER - II
GRANT OF LICENCE

Application for licence.

3. Any individual/firm/company incorporated under Registration of Companies Act, Sikkim, 1961 desiring to sell foreign and country liquor by retail shall apply in Form I appended to these rules to the Commissioner of Excise.

Consideration of Application.

4. On receipt of application in Form I as referred to in rule 3, the particulars and other information as furnished by the applicant shall be verified and scrutinized by the officers authorized by the Commissioner of Excise and thereafter the said officers shall submit the verification report in Form II.

Eligibility criteria for obtaining the licence and for becoming the salesman.

5. The Excise licence for retail sale of Foreign liquor and country liquor shall be granted only to the bonafide residents of the State of Sikkim. This shall mutatis-mutandis apply for appointment of salesman of the licensee. For appointment of the salesman an application as prescribed in enclosure II of Form I is to be made and the required details contained therein furnished. The licensee can appoint more than one salesman on actual need basis.

Issue of Settlement Order .

6. The Commissioner after considering the verification report as referred to in Rule 4 above, and after satisfying himself that the premises proposed for the shop for selling foreign liquor and country liquor are in conformity with the provisions of the Act, Rules and instructions issued by the Government or the Commissioner in this behalf from time to time, may inform the applicant of the decision and issue the settlement order in Form III on payment of requisite fees as Licence Fee as prescribed by the Government and security deposit of the equivalent amount:

Provided that if the applicant in whose favour the settlement order with instruction as prescribed in Form III therein fails to comply within 7 (seven) days of the receipt of intimation, it shall automatically be treated as cancelled.

Location of the shop.

(2) The location of the shop shall be as prescribed by the Government.

(b) person who is in an intoxicated state,
(c) person known or suspected to be involved in any disturbance of law and order,
(d) person who is under the age of eighteen years,
(e) students either of school or college, and
(f) the Armed Forces of the Union, members of Police Force or any other personnel in uniform.

Maximum selling price.

18. The foreign and country liquor shall not be sold from the licensed premises at a price exceeding the maximum price prescribed by the Government/ Manufacturer from time to time.

Combination of businesses.

19. The business of selling foreign and country liquor at the licensed premises shall not be combined with any other business in the same premises.

Regulation of business of licensee through salesman.

20. (1) A holder of retail licence of foreign and country liquor shop shall carry on his business under the license either personally or by an agent or servant duly authorised by him in his behalf by a written application in enclosure II of Form I alongwith three copies of passport size photograph and granted salesman registration certificate in enclosure III of Form I duly signed by the Commissioner or the Excise Officers authorised in that behalf. If more than one salesman is proposed to be appointed, separate application with relevant particulars are to be submitted.

(2) A licensee shall not authorize any of the following persons as his agents or servants, namely :-

(a). persons below eighteen years of age.
(b). persons suffering from any infection or contagious disease,
(c). persons of unsound mind,
(d). persons who in the opinion of the Commissioner are of bad character;
(e). persons whose salesman registration certificates or licenses have previously been canceiled,
(f). persons convicted of any offence under the Indian Penal Code, 1860 or
(g). women, with or without remuneration, without the previous permission in writing to the Commissioner:

Provided that in the case of person falling under clauses (d), (e) and (f), the Commissioner may make such inquiries as he deems necessary for the removal of the disqualification and if he is satisfied that there is no objection, he may, for reasons to be recorded in writing, remove the same at any time:

Provided further that on any reason recorded in writing the Commissioner can order the withdrawal of salesman registration. Thereafter salesman registration certificate shall forthwith be withdrawn.

(3) The holders of a retail licence shall keep in the licensed premises an up-to-date list showing the names of all authorised agents or servants.

(4) The licensee shall keep in the licensed premises a Register in such form as may be prescribed. The accounts shall be clearly and correctly written daily as prescribed in Form IV. These accounts shall be kept open for inspection by the Commissioner or any other officer empowered under section 58 of the Act.

Temporary LicenceOn special occasion.

7. Temporary Licence on special occasion, namely, Magh Sankranti Mela, season of Hot spring, Namsung Mela, Gumpa Mela, etc. etc. shall be issued on daily basis fee as prescribed by Notification from time to time.

Tenure of Licence.

8. The tenure of licence shall be for a block of 4 (four) financial years and the block year shall commence from 01.04.2005.

Issue of duplicate Licence.

9. If the original licence is lost, a duplicate may be issued on payment of a fee of Rs. 50/- (Rupees fifty) only unless for a special reason the Commissioner considers that the fee should be waived.

Renewal of Licence.

10. The Licence shall be renewed during the last week of March every year after the payment of annual licence fee as prescribed by Notification. The renewal of Excise Licence can be denied in case of any violation of the terms and conditions laid down in these Rules.

Foreign liquor and Country liquor to be sold in sealed bottles.

11. Foreign and Country Liquor shall not be kept and sold at licensed premises except in corked bottles, sealed or capsuled.

Sources of supply.

12. The Foreign and Country Liquor required for sale under the licence shall be obtained from the sources authorised by the Commissioner after duly paying excise duty, bottling fee and other liabilities as prescribed by the Government from time to time. The licensee is not allowed to procure or obtain in any manner the liquor from other licensees who have been granted the licence under these Rules.

Liquor to be sold at the licensed premises.

13. The Foreign and Country liquor shall be sold only at licensed premises and only to bonafide customers.

No drinking in the licensed premises.

14. The person in charge of the licensed premises shall not permit any liquor to be drunk in the licensed premises or any premises connected therewith that may be in his occupation or under his control.

Provision of separate godown.

15. Separate godown to store liquors shall be allowed on payment of Rs.5000/- (Rupees five thousand) only per annum as godown registration fee. The registration fee shall be paid during the last week of March of each financial year.

Frontage size/ area and other requirement of shop premises.

16. The frontage of the shop shall be not less than ten feet and should have not less than 100 sq. ft. of area. There should be only one point for entry and exit. No back door is allowed to be opened up and there should be no residential accommodation interconnected to the shop premises.

To whom foreign liquor and country liquor shall not be sold.

17. The licensee shall not sell foreign and country liquor to the following categories of persons, namely:-

(a) lunatic or insane persons,

(5) The l icensee shall submit such returns as may be prescribed from time to time.
(6) The licensee shall produce for inspection his licence on demand by any officer authorised to do so.
(7) The licensed premises and stock of foreign and country liquor contained therein shall at all times be open to inspection by officers empowered under section 58 of the Act.
(8) The licensee shall, when called upon to do so by any officer empowered under section 58 of the Act, give an explanation in writing regarding any irregularity detected at his licensed premises and shall furnish any information regarding the management of the said premises and shall answer all reasonable question to the best of his knowledge and belief. He shall also on demand allow an inspecting officer to take without payment samples of liquor for analysis.
(9) The licensee shall not sell, transfer or sublet his right of selling foreign and country liquor conferred upon him by the licence nor shall he in connection with the said right enter into an agreement or arrangement which is of the nature of a lease. If any question arises as to whether any agreement or arrangement is of the nature of a lease, the decision of the Commissioner on such question shall be final and binding on the licensee.
(10) The licensee shall receive no other article but money in sale of any liquor covered by the licence.
(11) The licensee shall close his shop when ordered to do so by any District or Sub-Divisional Magistrate or Superintendent of Police by notice in writing for such period as such Magistrate or Superintendent of Police may think necessary for the preservation of the public peace and shall also keep his shop closed when ordered to do so by any Magistrate or any Police officer above the rank of Inspector in the event of occurrence and apprehension of riot or unlawful assembly in the vicinity of the shop.
The licensee shall keep his shop open barring following days:-

Days when shop to be kept closed.

21. (a) 'Dry Days', declared by the Government by Notification
(b) "General Election" or "by-election" as per the guidelines of the Election Commission of India and State or local election conducted by a statutory authority covering the area of the location of the shop.
(c) Days declared by the Government to remain closed in the public interest.

Display of signboard.

22 (1) The licensee shall affix in the front of the licensed premises a signboard having the following inscription in the English / Devanagiri:- Name of licensee: Licence No./ Year Licensed to sell Foreign and Country liquor:Time and hour of sale – 7.00 AM to 8.00 PMLocation.....
(2) The signboard shall have the size of 2 feet by 4 feet and be written black on yellow background. The signboard shall be prominently displayed.

Display of publicity materials and hoardings of liquor outside the licensed premises.

23. Excepting the signboard as prescribed under rule 21, display of boards, glow signs depicting the name of the products and the manufacturers and outside the licensed premises is prohibited.

Transfer of licence on the death of licensee

24. In the event of death of a licensee during the currency of the licence, the Commissioner may renew the licence on the same terms in favour of representative of the deceased if he is satisfied that such representative is fit subject to the condition that any arrears due from the deceased licensee are recovered before the licence is so renewed. In such case no fresh deposit shall required.

Licensee to abide by the provision of Act, rules etc.

25. (1) Every licensee shall comply promptly with all orders or directions issued from time to time under the Act, rules, regulations and orders made thereunder.

(2) The licensee or his successors or his assignees shall have no claim whatsoever to the continuance of the licence after the expiry of the period for which such licence was granted.

(3) When a licence is suspended or cancelled during the currency of the licence period or is not renewed on its expiry, the licensee shall forthwith surrender the whole stock of unsold foreign liquor to the Commissioner. The stock so surrendered shall be sold by the Commissioner and the proceed of the sale shall, after deducting the expenses and any sum due to the Government, be returned to the licensee.

Suspension or cancellation of licence.

26. A licence may be suspended or cancelled in accordance with the provisions of the Act, rules, regulations and orders made thereunder from time to time.

PRINCIPAL SECRETARY
EXCISE (ABK) DEPARTMENT
GOVERNMENT OF SIKKIM

Form No. I

(See rule 3)

APPLICATION FORM FOR RETAIL SALE OF FOREIGN AND COUNTRY LIQUOR SHOP

Photo 3
(three) copies

To,

The Commissioner,

Excise (Abkari) Department,

Govt. of Sikkim,

Gangtok.

I beg to apply for licence under the provisions of Rule 3 of the Sikkim Excise (Licensing for Retail Sale of Foreign Liquor and Country Liquor) Rules, 2004.

My particulars and the details are enclosed as per the Enclosure I and II for kind consideration.

Thanking you.

Yours faithfully,

Signature of the Applicant

Name :.....

Address:.....

.....

ENCLOSURE I OF FORM I

1. Name of the applicant: .....

2. Occupation of the applicant: .....

3. (a) Place of Birth:.....

   (b) Date of Birth:.....

4. (a) Whether he is holding Sikkim Subject Certificate/Certificate of Identification, if so, copy of the certificate to be furnished.

   (b) If it is otherwise, documentary evidence proving that he is bonafide resident of the State of Sikkim be furnished.

5. Permanent Address in full:.....

   Village:.....

   P.O.:.....

   Police Station:.....

   District :.....

6. Present Address in full:.....

   Village:.....

   P.O.:.....

   Police Station:.....

   District :.....

7. Type of construction of proposed shop whether RCC or wooden structure

   :.....

8. Whether proposed shop house within the Schedule to the Sikkim Excise (Prohibited Sites for Liquor Shop) Rules, 1996 .....

9. Whether proposed shop is to set up in rented premises. If so, NOC from the house owner to run the Liquor Shop for a period of four year by the applicant to be furnished.

10. If the applicant proposes to appoint salesman the details to be furnished as per Annexure II.

11. Size of proposed shop premises (Length..... sq. ft, breadth ..... sq ft).

12. Details of the Excise Licence held in the previous year.

    (a) Licence No:.....

    (b) Kind of Shop: .....

    (c) Place:.....

    (d) District:.....

13. Whether any of the family members of the applicant was holding any Excise Licence during the last settlement/contract period.

    (a) Licence No:.....

    (b) Kind of Shop: .....

    (c) Place:.....

    (d) District:.....

I hereby declare that the aforesaid particulars are correct.

1. Signature: .....
2. Name: .....
3. Address:.....

   .....
4. Date:.....

Enclosure II of Form I

APPLICATION FOR REGISTRATION OF SALESMAN

(If the licensee proposes to appoint more than one salesman, separate forms to be used for individual case)

To,

The Commissioner,
Excise (Abkari) Department,
Government of Sikkim,
Gangtok.

Subject: **REGISTRATION OF SALESMAN.**

Sir,

I would like to request you to kindly register the person whose particulars are indicated below as Salesman for my proposed Foreign and Country Liquor shop located at _____ _____.

1. Name:.....
2. Present Address in full:

   Village:.....

   P.O.:.....

   Police Station:.....

   District :.....
3. Permanent Address in full.

   Village:.....

   P.O.:.....

   Police Station:.....

   District :.....
4. (a) Place of Birth:.....

   (b) Date of Birth:.....
5. (a) Whether his a bonafide Sikkim Subject holder or holder of Certification of Identification, if so, a copy of Certificate to be furnished.

   (b) If it is otherwise, documentary evidence proving that he is a bonafide resident of the State of Sikkim to be furnished.

This is certified that the particulars as furnished above are correct and signature of the proposed Salesman is attested below.

Yours faithfully

Signature of the Proposed Salesman
Date:.....

Signature of the Licensee
(Full name)

Enclosure III of Form I

(See rule 5)

REGISTRATION OF SALESMAN

No.. .....Ex/Abk

Dated:.....

Name of the Licensee:_____

Address:_____

Licence No._____

With reference to your application dated _____, this is to inform you that Shri_____ has been appointed as SALESMAN of your Foreign and Country liquor shop at _____ till_____.

This salesman registration Certificate issued by the Department **shall not be valid for any other purposes.**

COMMISSIONER/ EXCISE

EXCISE (ABKARI) DEPARTMENT

Form No. II

(See rule 4)

VERIFICATION REPORT

Ref. No. .....Ex/Abk Dated:.....

Sir,

With reference to application No. _____ _____dated _____ on the case of Shri _____ S/o _____ resident of _____ for the grant of Excise licence to undertake the business of Foreign Liquor and Country Liquor Retail shop under the provision of Sikkim Excise (Licencing for Retail Sale of Foreign Liquor and Country Liquor) Rules, 2004. I have conducted a detailed enquiry including spot verification and report is submitted below: -

1. The applicant is a bonafide resident of the State (copies of Certificate enclosed) _____.
2. The applicant is neither a minor nor a Government employee.
3. The age of the applicant is _____ years.
4. The applicant is having sound integrity and he has not committed any crime under the provisions of the Sikkim Excise Act, 1992, in the past.
5. The shop is proposed to be opened at _____, which falls within the schedule to the Sikkim Excise (Prohibited Sites for Liquor Shops) Rules, 1996. (A rough sketch showing the details of the proposed location including its surroundings is enclosed).
6. The proposed location is along the side of the road and is distinctly visible from the road. (This is applicable only in case of Foreign and Country Liquor retail shop).

7. The shop is proposed to be opened in his own house/rented house belonging to Shri/ Smt._____ and the same is RCC/Ekra with GCI / thatched roof structure. Layout plan (including frontage area) and NOC from the house owner is enclosed.

8. The applicant has proposed to appoint Salesman for running the shop and the particulars as received in Enclosure II to Form I has been verified and same is **found/not found** in conformity with Sikkim Excise (Licensing for Retail Sale of Foreign Liquor and Country Liquor) Rules, 2004.

The undersigned have verified all the details furnished by the applicant after spot verification and the case meets/ does not meet the requirement as laid down in the Sikkim Excise Licensing for Retail Sale of Foreign and Country Liquor Rules, 2004. Hence recommended /not recommended (as the case does not meet provision under condition No..... of the Rules).

Signature of the Verifying Officer

Name:

Designation:

Station

Encl: as above.

FORM III

(See rule 6)

No._____/Ex(ABK) Dated_____

To

_____

_____

_____

Sub: **SETTLEMENT ORDER.**

Reference your letter application dated_____ requesting for Excise licence for operating Foreign Liquor and Country Liquor retail shop at your own house/rented house of Shri/ Smt._____ situated at _____ East/ North/South/West district has been approved and settled for a block period of 04 (four) years i.e. from 1st April, 2005 to_____. This settlement is subjected to the provisions of the Sikkim Excise (Licensing of Foreign Liquor & Country Liquor) Rules, 2004.

1. Payment of annual licence fee amounting to Rs._____ for the year _____ is to be deposited within 7 (seven) days from the date of issue of this order and bank Receipt/ Challan after crediting the amount to Major Head 0039 State Excise-800-Licence Fee in the State Bank of Sikkim for the year_____ and Fixed Deposit Receipt as security money for a period of _____ year of the equivalent amount in favour of the Commissioner Excise should be made. In the event of your failure to do so, this approved settlement order shall stand automatically cancelled.

2. In order to maintain continuity of operation, all the concerned Excise Officers and Warehouse Officers of the Department have been endorsed a list of this order who in turn may issue the liquor in your favour only on production of proof of your having paid the necessary Licence Fee and the Security Deposit as required.

3. The original copy of the Bank Receipt / Challan and Security Deposit should be submitted to the Deputy Commissioner (E/N), Excise, Gangtok for East and North Districts. Similarly for South and West Districts, they should be submitted to the Assistant Commissioner, Excise, Jorethang. You may retain the Xerox copies of both the receipts as proof of having paid the amount and also taking out the liquors from the respective warehouse.

COMMISSIONER/EXCISE

Copy to:-

1. Deputy Commissioner (E/N), Excise/ Asstt. Commissioner (S/W), Jorethang with the direction to obtain the report from the concerned officer and report to higher authority.
2. I.E. Melli / Rangpo / Jorethang / Gangtok. With direction to report the undersigned through proper channel after opening of the shop positively.
3. S.I.E. Gangtok / Mangan / Namchi / Gyalshing / Pakyong/ Ravangla / Soreng.
4. Guard file.

COMMISSIONER/EXCISE

FORM IV
See Rule 20 (4)

Daily Accounts Register (In cases/Bottles/)

Date:_____

BRAND NAME	OPENING STOCK			FRESH RECEIPT OF THE DAYS			T.P. NO. & DATE IF ANY	TOTAL			SALE			CLOSING STOCK			INSPECTED By Name/Sig. & date	REMARKS
	Qrts.	Pts.	Nips	Qrts.	Pts.	Nips		Qrts.	Pts.	Nips	Qrts.	Pts.	Nips	Qrts.	Pts.	Nips		

Printed at Sikkim Government Press, Gangtok.